

3. Linsk sought review of the Bureau's decision.⁵ Linsk characterizes CGB's disclosures as being of queries from the database and asserts that the FOIA requires disclosure of the database that was withheld. He suggests that it would be more cost effective for the Commission to provide a copy of the database than for it to provide the paper printouts and PDF files that were provided.

Discussion

4. On review, we find no reason to disturb the Bureau's decision. Linsk's FOIA request is governed by 5 U.S.C. § 552(a)(3)(B), which provides:

In making any record available to a person . . . an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

The Ninth Circuit explained the scope of an agency's responsibilities under this section:

[I]f the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant expenditure of resources in both time and manpower, that would cause a significant interference with the operation of the [agency's] automated information system would not be a business as usual approach.

TPS, Inc. v. U.S. Department of Defense, 330 F.3d 1191, 1193 (9th Cir. 2003) (TPS, Inc.).⁶

5. In this case, we interpret Linsk's reference to disclosure of the actual database to mean disclosure of the information in the form of an electronic file that could be sorted, searched, and otherwise processed by database software such as Microsoft Access. Staff communications with Linsk confirm this interpretation. We conclude that the requested records could not be readily reproduced in the format Linsk requests.

6. Specifically, the information that the Commission collects and stores about the opt-in states' slamming complaints is contained in two databases that are maintained by an outside contractor. Granting Linsk's request to produce the data in a form that Linsk could process using

⁵ Letter from Rick Linsk to Office of General Counsel, Federal Communications Commission (Jun. 12, 2003).

⁶ Accord, United States Department of Justice, FOIA Update, Vol. XVII, No. 4, at 2 (Fall 1996), posted at <www.usdoj.gov/oip/foia_updates/Vol_XVII_4/page1.htm> (any request for disclosure in a form or format not already existing at the agency "will have to be considered by the agency on a case-by-case basis, to determine whether the records are 'readily reproducible' in that form or format with 'reasonable efforts' on the part of the agency).

database software would entail a significant and unusual expenditure of time and effort. According to the contractor, it would require writing software that would "sanitize" proprietary fields and then export data files, encompassing the approximately 100 fields in the database, to a flat file,⁷ followed by converting the flat file to a usable format, such a spreadsheet, for disclosure to Linsk. The contractor estimates that it would require 80 to 120 hours at approximately \$90 an hour to perform these operations, and questions whether such operations should be deemed within the scope of its responsibilities at all. Commission personnel could not perform these operations without the contractor's assistance.

7. We find that an effort of this magnitude is not "reasonable," and, consequently, that the information is not "readily reproducible" in the form Linsk seeks for purposes of 5 U.S.C. § 552(a)(3)(B). Moreover, we find that the efforts described would interfere with the routine operation of the Bureau's automated information system. The personnel necessary to provide Linsk with the records in the format he requested are not available in the ordinary course of business of this agency. We therefore find that the impact of fulfilling Linsk's request in the format sought is not consistent with a "business as usual approach" as set forth in TPS, Inc.

8. Accordingly, IT IS ORDERED that Rick Linsk's application for review is DENIED. Linsk may seek judicial review of the denial in part of his FOIA request pursuant to 5 U.S.C. § 552(a)(4)(B).

9. The following officials are responsible for this action: Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷ A flat file is a text file that lacks any specific formatting or markup codes.